Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-817

DONALD L. BRISENDINE and JOHN BASS,
Petitioners,

v.

NATIONAL MOVIE-DINE, INC., et al.,
Respondents.

APPENDIX OF ORDERS AND DECREES TO SUPPLEMENT PETITION FOR WRIT OF CERTIORARI FILED ON NOV. 25, 1977.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No. 76 Civ. 4713 (R.J.W.)

In the Matter of the Arbitration between
National Movie-Dine, Inc.,
Petitioner,

and
Donald L. Brisendine and John Bass,
Respondents.

ORDER COMPELLING ARBITRATION

The petitioner National Movie-Dine, Inc. having filed a petition for an order, compelling arbitration of the controversies that have arisen between it and Donald L. Brisendine and John Bass, respondents, pursuant to the provisions of §4 of the United States Arbitration Act, 9 U.S.C. §4, and the petition having regularly come on to be heard at the motion term of this Court on November 23, 1976.

Now, upon reading and filing the notice of petition, dated October 26, 1976, the petition of National Movie-Dine, Inc., dated October 22, 1976, the affidavit of Vincent J. Bochis, sworn to October 26, 1976 and the exhibits attached thereto, including the written arbitration agreements (the "Agreements"), both dated April 4, 1976 and separately entered into by respondents with petitioner providing for a settlement by arbitration of any dispute arising thereunder, with proof of due service thereof, all submitted in support of the petition, and respondents having

defaulted in pleading or appearing thereon, and due deliberation having been had and the court being satisfied that neither the making of the written arbitration agreements nor the failure by respondents to comply therewith is in issue, and the court having rendered its decision,

Now, on motion of Lans Feinberg & Cohen, attorneys for the petitioner, it is

ORDERED that the petition be and the same hereby is, in all respects, granted, and it is further

ORDERED that respondents Donald L. Brisendine and John Bass, be and they hereby are directed to proceed to arbitration, in the City, County and State of New York, of the disputes set forth in the petition which are pending between petitioner and respondents and that said arbitration proceed in accordance with the rules of the American Arbitration Association as provided in paragraph 17 of the Agreements, and it is further

ORDERED that the disputes and controversies existing between petitioner and respondents be and the same are hereby consolidated into one arbitration proceeding under the title of "National Movie-Dine, Inc., claimant, against Donald L. Brisendine and John Bass, respondents."

Dated: New York, New York
December 2, 1976

/s/ Robert J. Wards
U.S. D.J.

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3-76-1329-G

DONALD L. BRISENDINE, et al.
Plaintiffs,

VS.

NATIONAL MOVIE-DINE, INC., et al.,
Defendants.

ORDER STAYING ALL PROCEEDINGS PENDING ARBITRATION

Defendants National Movie-Dine, Inc., Creative Cine-Tel, Inc., Ernest Bogen, and Lawrence H. Forray, who are all of the Defendants who have been served with process in this case (the "Defendants"), have moved the Court, pursuant to Section 3 of the United States Arbitration Act, 9 U.S.C. 3, and Rule 6(b) of the Federal Rules of Civil Procedure, for an Order staying all proceedings in this action and extending the time within which they must Answer or otherwise plead to the Complaint herein, until arbitration has been held regarding the alleged dispute upon which this action is based, in accordance with paragraph 17 of the Distributor Licensing Agreements executed between Defendant National Movie-Dine, Inc. and the respective Plaintiffs during April 1976 (the "Distributing Agreements"). Upon consideration of the pleadings, memoranda and Affidavits of the respective parties, and after hearing the argument of

counsel for the respective parties, it appears to the Court that:

1. The Distributor Licensing Agreements constitute "contract(s) evidencing a transaction involving commerce" within the meaning of Sections 1 and 2 of the United States Arbitration Act, 9 U.S.C. §§ 1 and 2;

2. The Distributor Licensing Agreements expressly provide for arbitration in paragraph 17 as follows:

> Any controversy, dispute, or question arising out of any aspect of the Agreement, including the making thereof, shall be resolved by arbitration in accordance with the then existing rules of the American Arbitration Association conducted in New York, New York . . .

3. The allegations of the Complaint in this action state a controversy and dispute arising out of the making of the Distributor Licensing Agreements and are subject to arbitration pursuant to paragraph 17 of the Distributor Licensing Agreements;

4. On December 2, 1976, the United States District Court for the Southern District of New York entered an Order pursuant to Section 4 of the United States Arbitration Act, 9 U.S.C. §4, compelling Plaintiffs to submit their alleged disputes with Defendants arising out of the Distributor Licensing Agreements to arbitration, in the City, County and State of New York, in accordance with paragraph 17 of the Distributor Licensing Agreements; and

5. Based on *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d

1270 (1967), the entry of an Order staying all further proceedings in this action pending arbitration is now appropriate.

It is therefore, ORDERED that all proceedings in this action be and they are hereby stayed and the time for Defendant to Answer or otherwise plead to the Complaint herein be and it is hereby extended until arbitration has been held regarding the alleged disputes upon which this action is based in accordance with paragraph 17 of the Distributor Licensing Agreements.

Signed this 14th day of April, 1977.

/s/ Patrick Higginbotham
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NO. 3-76-1329-G

DONALD L. BRISENDINE, et al.
Plaintiffs,

VS.

NATIONAL MOVIE-DINE, INC., et al.,
Defendants.

REVISED ORDER STAYING ALL PROCEEDINGS PENDING ARBITRATION

Defendants National Movie-Dine, Inc., Creative Cine-Tel, Inc., Ernest Bogen, and Lawrence H. Forray, who are all of the Defendants who have been served with process in this case (the "Defendants"), have moved the Court, pursuant to Section 3 of the United States Arbitration Act, 9 U.S.C. 3, and Rule 6(b) of the Federal Rules of Civil Procedure, for an Order staying all proceedings in this action and extending the time within which they must Answer or otherwise plead to the Complaint herein, until arbitration has been held regarding the alleged dispute upon which this action is based, in accordance with paragraph 17 of the Distributor Licensing Agreements executed between Defendant National Movie-Dine, Inc. and the respective Plaintiffs during April 1976 (the "Distributing Agreements"). Upon consideration of the pleadings, memoranda and Affidavits of the respective parties, and after hearing the argument of

counsel for the respective parties, it appears to the Court that:

1. The Distributor Licensing Agreements constitute "contract(s) evidencing a transaction involving commerce" within the meaning of Sections 1 and 2 of the United States Arbitration Act, 9 U.S.C. §§ 1 and 2;

2. The Distributor Licensing Agreements expressly provide for arbitration in paragraph 17 as follows:

> Any controversy, dispute, or question arising out of any aspect of the Agreement, including the making thereof, shall be resolved by arbitration in accordance with the then existing rules of the American Arbitration Association conducted in New York, New York . . .

3. The allegations of the Complaint in this action state a controversy and dispute arising out of the making of the Distributor Licensing Agreements and are subject to arbitration pursuant to paragraph 17 of the Distributor Licensing Agreements;

4. On December 2, 1976, the United States District Court for the Southern District of New York entered an Order pursuant to Section 4 of the United States Arbitration Act, 9 U.S.C. §4, compelling Plaintiffs to submit their alleged disputes with Defendants arising out of the Distributor Licensing Agreements to arbitration, in the City, County and State of New York, in accordance with paragraph 17 of the Distributor Licensing Agreements; and

5. Based on *Prima Paint Corp. v. Flood and Conklin Mfg. Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d

1270 (1967), the entry of an Order staying all further proceedings in this action pending arbitration is now appropriate.

It is, therefore ORDERED that all proceedings in this action be and they are hereby stayed until the entry of an order confirming the arbitration award, and, should it be necessary, that the time to Answer or otherwise plead to the Complaint herein be and it is hereby extended until twenty days after service of notice of entry of the order confirming the arbitration award.

Signed this 20 day of April, 1977.

/s/ Patrick Higginbotham
United States District Judge

In The

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 77-2022

Donald L. Brisendine, and John Bass
Plaintiffs-Appellants,

versus

National Movie-Dine, Inc., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

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Before THORNBERRY, RONEY and HILL, Circuit Judges.

BY THE COURT:

IT IS ORDERED that appellees' motion to dismiss the appeal is granted.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Appendix to Petition for Writ of Certiorari were sent to Lans, Feinberg & Cohen, 555 Madison Avenue, New York, New York 10022, and Mr. Martin Barenblat, 2001 Bryan Tower, Dallas, Texas 75201, by placing same in the United States mail, postage prepaid, this ..... day of December, 1977.

.....

H. C. McCracken